

WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1135
Fax: 202 303 2000

May 19, 2017

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, DC 20554

Re: ***Liberian Broadcasting, Inc. v. Comcast Corporation, File No. CSR-8922-P,
MB Docket No. 16-121***

Dear Ms. Dortch:

Enclosed is the Public version of the Response, filed on behalf of Comcast Corporation and Comcast Cable Communications, LLC (together, "Comcast"), to the submission filed by Liberman Broadcasting, Inc. and LBI Media, Inc. (together, "LBI") on May 15, 2017.

Comcast is today filing the Confidential version of this Response in hard copy at the Secretary's Office and serving a copy to counsel for LBI.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in blue ink that reads "Michael Hurwitz/bas".

Michael D. Hurwitz
Counsel for Comcast Corporation and
Comcast Cable Communications, LLC

Enclosure

WILLKIE FARR & GALLAGHER_{LLP}

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1135
Fax: 202 303 2000

May 19, 2017

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, DC 20554

Re: ***Liberman Broadcasting, Inc. v. Comcast Corporation, File No. CSR-8922-P,
MB Docket No. 16-121***

Dear Ms. Dortch:

On behalf of Comcast Corporation and Comcast Cable Communications, LLC (together, “Comcast”), this letter responds to the lengthy submission filed by Liberman Broadcasting, Inc. and LBI Media, Inc. (together, “LBI”) on May 15 following the parties’ meeting with Commission staff on May 11 (“LBI Brief”).

LBI’s submission re-argues LBI’s fully briefed, pending petition for reconsideration, and introduces new claims, facts, and arguments about carriage of Estrella TV’s white area feed and other issues that were *not* raised in LBI’s Complaint or presented in the record of this proceeding. In contrast, Comcast’s own May 15 letter submission faithfully summarizes what Comcast representatives presented at the meeting, as provided in the Commission’s rules.

In addition, having pursued a complaint regarding its alleged standing to file a program carriage complaint *as a broadcaster* and been denied on this theory by the Bureau, and then having filed a petition for reconsideration of that broadcaster standing claim, LBI is now attempting to recast this proceeding by throwing in new unsubstantiated allegations and in some cases dubious facts about its satellite white area feed as a path to—as it admits—resurrecting its bid for the *same*

Marlene H. Dortch
May 19, 2017
Page 2

maximalist relief (including for its *broadcast* markets) that the Bureau’s dismissal Order already forestalls. *See* LBI Brief at 8, 28. Such gamesmanship should not be condoned by the Bureau.

For these reasons, Comcast has respectfully urged the Bureau to proceed to expeditious resolution of this case by affirming its prior Order, denying LBI’s petition for reconsideration, and reiterating its prior finding regarding the options available for LBI going forward. This would leave LBI free to file a complaint based on white area carriage, assuming it has a good-faith basis to do so, and would allow Comcast to respond and the Bureau to then consider these issues on a properly-developed record. If the Bureau instead feels compelled to supplement its prior ruling by further addressing white area carriage, it should find that a white area feed is consistently treated as an adjunct to broadcast carriage in marketplace negotiations—*as it was indisputably in this case, as the record clearly shows*¹—and should thus be subject to the retransmission consent regime, which would allow LBI to file a complaint under 47 C.F.R. § 76.65(b).² But the Bureau need not resolve this question prematurely; it can instead leave that question to another day, when it is appropriately filed and ripe for decision.

This orderly approach would ensure that the Bureau has the opportunity to consider the full implications of the novel issue LBI has put before it in the proper setting.³ And, given that LBI filed its petition for reconsideration, already sent Comcast a pre-filing notice of a white area feed complaint, and sought (and obtained) a tolling agreement from Comcast as to that complaint, there is no prejudice to LBI. Moreover, this approach will allow Comcast the opportunity to respond in full to new facts and arguments—properly presented in a complaint with sworn declarations and documentary support, rather than in letter submissions that are riddled with inaccuracies and mischaracterizations⁴—as the Commission’s program carriage *prima facie*

¹ *See* Comcast May 15, 2017 letter at 3 & n.6 (detailing record cites).

² For this reason, LBI’s claim that a finding that it is not a video programming vendor (“VPV”) for white area purposes would “entirely strip LBI of any possible remedy against unlawful MVPD behavior” is simply untrue. LBI Brief at 7.

³ Specifically, as Comcast previously noted, a Commission decision on whether an entity is a VPV with respect to its white area feed could have significant unintended consequences in the marketplace. While LBI tries to portray its satellite white area feed as more significant than and somehow *different* from its broadcast station distribution, the white area feed is *precisely the same* input LBI provides to *Estrella TV broadcast stations*. Indeed, *every* national broadcast network large and small has a satellite feed for this purpose that easily could be converted to a white area feed (since, after all, it requires no additional investment in broadcast station distribution). As such, a finding by the Bureau that a broadcast network’s white area feed has standing as a VPV could have the unintended consequence of encouraging other broadcast networks (and potentially other entities with a satellite feed of their content, regardless of how it is offered in the marketplace) to contort their satellite feeds in order to be eligible for program carriage remedies, which is not a result that Congress or the Commission intended.

⁴ There are serious questions about the carriage numbers and the supposed {REDACTED} LBI claims for Estrella TV in this filing—factual assertions that (among others) would not withstand scrutiny on a full record. For example, based on SNL Kagan data, LBI asserts that Comcast distributes the Telemundo white area satellite feed to just over {REDACTED} customers. But the actual number is {REDACTED}. It seems highly likely that LBI’s claim that “in white areas Charter distributes EstrellaTV to approximately {REDACTED} customers,” LBI Brief at 3 (also based on Kagan estimates rather than actual numbers known to LBI), is also {REDACTED}.

Marlene H. Dortch
May 19, 2017
Page 3

procedures contemplate. *See Revision of the Commission's Program Carriage Rules*, Second Report and Order, 26 FCC Rcd. 11494 ¶ 18 (2011) (discussing the Commission's expectation that an Answer will contain "a full, case-specific response, with supporting evidence, to the evidence put forth by the complainant," and that the Commission's established pleading procedures and timeframes will result in the "development of a more robust factual record"). This orderly process—and Comcast's due process rights—should not be short-changed.

Please do not hesitate to contact me with any questions.

Respectfully submitted,

A handwritten signature in blue ink that reads "Michael Hurwitz/lbas".

Michael D. Hurwitz
Counsel for Comcast Corporation and
Comcast Cable Communications, LLC

cc: Markham Erickson, Steptoe & Johnson, LLP
Jay Cohen, Paul, Weiss, Rifkind, Wharton & Garrison LLP
Mary Beth Murphy, Media Bureau
Martha Heller, Media Bureau
Raelynn Remy, Media Bureau
Susan Aaron, OGC

Likewise, despite numerous opportunities to present evidence that it receives *any* fees for carriage of its white area feed from *any* MVPD, LBI now simply asserts, vaguely, that it [REDACTED] LBI Brief at 8. Given that LBI's white area carriage demand—and desired Commission-imposed remedy—would require [REDACTED] in fees from Comcast, this is one of many factual points that warrant further treatment at the prima facie stage.